

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**INFORMATION FOR FILING A
CIVIL RIGHTS COMPLAINT
UNDER
42 U.S.C. SECTIONS 1983 AND 1985**

Office of the Clerk of Court

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INTRODUCTION

This information packet is designed to help you file a civil rights complaint in federal court without the help of a trained and licensed attorney. In a civil rights complaint you are alleging that your constitutional rights or privileges or immunities have been violated. The federal law under which a civil rights claim arises is 42 U.S.C. sections 1983 and 1985. (U.S.C. stands for "United States Code," which is a collection of all the federal laws in the country. The law under which a civil rights action is brought is located in sections 1983 and 1985 of title 42 of the United States Code.) When you represent yourself in a lawsuit you are known as a ***pro se* litigant**, or a person who is proceeding *pro se*.

In order to start a lawsuit based on a claim of violation of your civil rights, you must prepare and file with the court what is known as a **complaint**. This packet of instructions is designed to help you prepare a civil rights complaint under 42 U.S.C. section 1983 and 1985. For information on how to actually file the complaint with the court after you have prepared it and how to proceed in your lawsuit, you should obtain and read the ***Pro Se Litigant Guide***, which is available in any of the divisional Clerk's office of the U.S. District Court for the Western District of North Carolina located in Asheville, Charlotte or Statesville, NC.

A sample complaint form is included in this packet to help you to prepare your complaint. Your complaint must be typewritten or legibly handwritten. All questions must be answered clearly in the correct space on the form. If you need extra space additional page(s) must be legible and must indicate which question you are answering. If you are suing more than one person, you should state clearly which defendant you accuse of each act.

PREPARING THE COMPLAINT

1. To assist a party appearing *pro se* in filing a civil rights complaint, the office of the clerk has prepared a complaint form, a copy of which is attached to this information packet. The instructions in this section correspond by name to the sections in the sample complaint form.

2. If you need more space than the sample complaint form provides to record details, you should use additional sheets the same size as the complaint.

A. Caption and Heading: Before your case can be filed with the clerk's office, the first page of your complaint must indicate the **Division** of the Western District of North Carolina in which the case originates. Determining this is relatively easy.

Asheville Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is a Asheville Division case: *Avery, Buncombe, Burke, Cleveland, Haywood, Henderson, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania & Yancey counties.*

Bryson City Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is a Bryson City Division case: *Cherokee, Clay, Graham, Jackson, Macon & Swain counties.*

Charlotte Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is a Charlotte Division case: *Anson, Gaston, Mecklenburg & Union counties.*

Statesville Division: If the defendant(s) reside in, or if the action on which the lawsuit is based occurred in one of the following counties, it is a Statesville Division case: *Alexander, Alleghany, Ashe, Caldwell, Catawba, Iredell, Lincoln, Watauga & Wilkes counties.*

In the caption, you must also add your name as the plaintiff and the names of the people you are naming as defendants on the lines provided.

B. Jurisdiction: In this section, you inform the court why the case should be heard in federal court rather than state court or some other forum.

Options: For a complaint alleging a violation of civil rights, you have two options:

1. If your action is generally one for a violation of civil rights, 42 U.S.C. § 1983 will normally be the basis for the claim.
2. Claims under 42 U.S.C. § 1985 are limited. Generally that section prohibits certain categories of conduct relating to two or more persons acting together, or in a **conspiracy**, as provided for in the statute itself. In most instances, you must show that the conspiracy was entered for a racial or class-based reason.

Defendant's Relationship to the State: In order for your action to be heard in federal court under Section 1983, you must be able to show that the defendant(s), at the time the claims alleged in the complaint, were acting under the **authority** or color of state law. As you note the name of each defendant, you also should indicate whether that defendant under 42 U.S.C. §1983 is a person who acted "under the color of state law." This generally means that the person is a state official, a state employee, or someone who was acting in the name of the state under authority granted by the state, county, city, or other non-federal government entity. Normally a claim under 42 U.S.C. § 1985 requires class-based or racial hostility before it may proceed. ***Note: This is not a complete statement of the law on this subject; rather, it is intended to provide general guidance as you determine who to name as a defendant in your action.***

C. Parties: Next, you name the parties. As the person initiating the lawsuit, you are the plaintiff and must identify yourself as such. For each defendant named in your complaint, you should list their current address and a description of their employment. In addition, you should explain briefly how or in what capacity each defendant acted under authority given them by state or local government.

D. Nature of the Case: This section requires a brief statement of (i) the civil right that you allege has been violated by the defendant(s), and (ii) a description of how the defendant(s) violated that right.

E. Cause of Action: In this section, you are required to provide specific details of precisely how your civil right allegedly was violated. This description should include references to relevant dates, times, and locations. It should explain to the court what happened by specifically describing each defendant's behavior or action and how that behavior or action -- or lack of action -- resulted in the

violation of your right. You are not required to cite other cases in the law or to make a legal argument. However, you must be specific about (i) the particulars of the event, (ii) each defendant's misconduct, and how such misconduct resulted in a violation or denial of the civil right at issue in the case.

Where your complaint includes more than one incident, you should clearly distinguish between them by preparing a separate description -- usually a paragraph -- for each incident. Each incident should be identified as a separate **count**, and each count must include appropriate facts and evidence in support of the claims made in the count. Each incident must be clearly and specifically described; it should include the relevant time, date and location. Each incident description also should clearly identify the relevant defendant and what that defendant's role was in the incident.

If your case involves an allegation that two or more defendants jointly conspired to violate your civil rights, you must, in a separate count, state the approximate date the defendants entered into the conspiracy. Moreover, in the supporting facts, you should refer to any evidence you have that the defendants indeed did conspire together to violate your civil rights.

F. Injury: In this section you must state as specifically as possible the actual injury you suffered from the action of the defendant that resulted in the alleged violation of your civil right. Simply stating that your civil right has been violated is insufficient and will do little to persuade the judge that you have suffered an injury for which you should be compensated. As the plaintiff, you must explain to the judge how the action of the defendant(s) harmed you and violated your civil rights.

G. Previous Lawsuits and Administrative Relief: It is important, in this section, that you alert the judge to any other case in which you are or were a party that may be connected with the case you now are filing. If, for example, you filed an earlier case that includes some of the same facts and events you rely on for this case, the court needs to know. If you have submitted a formal complaint to an agency of the state on the issues you raise in this case, or if you previously asked for or participated in an administrative review process to attempt to solve the problem, you must tell the court the results, if any, of your action.

H. Request for Relief: In this section, you describe for the judge the result or relief you seek as a result of your lawsuit. The relief you request must be related specifically to the injury you have suffered.

I. Declaration Under Penalty of Perjury: You must sign your complaint and file it with the clerk of court. When you do, you are making a declaration under law to the court that everything in your complaint is true. It is important for you to realize that the judge assigned to your case can order **sanctions** or penalties against you or any other party that files complaints or pleadings that are frivolous, without merit, based on false or misleading information, etc. These sanctions or penalties can take many forms. Examples include dismissing your case, assessing fines, requiring you to pay the attorney costs for the opposing party, limiting your filing privileges in federal court, etc. If you intentionally make false statements in documents you file with the clerk, you may be charged with criminal lying or perjury, an offense with potentially serious consequences.

FILING THE COMPLAINT

You may file the complaint with the court by delivering it or mailing it to any of the divisional offices of the Clerk of Court located at:

U. S. District Court Clerk, Western District of North Carolina, Asheville Division, 100 Otis St., Rm. 309, Asheville, NC 28801, (828) 771-7200

U.S. District Court Clerk, Western District of North Carolina, Charlotte Division, 401 W. Trade St., Rm. 210, Charlotte, NC 28202, (704) 350-7400

U.S. District Court Clerk, Western District of North Carolina, Statesville Division, 200 W. Broad St., Rm. 100, Statesville, NC 28677, (704) 883-1000.

Whether you deliver or mail your complaint to the court, you must submit (1) an original and one copy of the complaint, (2) a completed **cover sheet**, a copy of which can be obtained from the clerk's office, and (3) the \$150 filing fee.

The \$150 filing fee can be waived by the court if you complete, and the court accepts, an **application to proceed *in forma pauperis***. An application to proceed *in forma pauperis* asks the court to have the government pay your filing fee for you because you do not have the money to do so yourself. Applications to proceed *in forma pauperis* are available at any of the divisional offices of the clerk of court, and are also available as part of the court's ***Pro Se Litigant Guide***. You should submit your application to proceed *in forma pauperis* along with your complaint to the clerk's office. If the court grants your application, you will be able to proceed without submitting the \$150 filing fee.

WAIVER APPLICATION DENIED IN ITS ENTIRETY: If a judge subsequently denies your waiver application in its entirety, you will be required to pay the \$150 filing fee. The original complaint along with a copy of the judge's order will be returned to you. When the filing fee is paid to the court, the complaint must accompany the fee with the original case number indicated on the first page.

WAIVER APPLICATION DENIED IN PART - PORTION OF FILING FEE ORDERED PAID: If the judge orders that a portion of the filing fee must be paid within a specified period of time, your complaint will be **file**-stamped and docketed. If the portion of the filing fee is not paid by the court's deadline, then your case will be dismissed.

Note: Each defendant named in your lawsuit must be notified of your law suit in a specific manner governed by law. You should refer to the court's ***Pro Se Litigant Guide*** for information on this matter.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION**

Plaintiff,

vs.

COMPLAINT
(42 U.S.C. §1983, §1985)
Case No. _____

Defendant(s).

A. JURISDICTION

Jurisdiction is proper in this court according to:

- a. ____ 42 U.S.C. §1983
- b. ____ 42 U.S.C. §1985
- c. ____ Other (Please Specify) _____

B. PARTIES

1. Name of Plaintiff: _____
Present mailing address: _____

2. Name of first defendant: _____
Present mailing address: _____

Is Employed As _____ at _____
(Position and Title, if any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ____ NO _____. If your answer is "YES" briefly explain.

3. Name of second defendant: _____
Present mailing address: _____

Is Employed As _____ at _____
(Position and Title, if any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ____ NO _____. If your answer is "YES" briefly explain.

4. Name of third defendant: _____
Present mailing address: _____

Is Employed As _____ at _____
(Position and Title, if any) (Organization)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ____ NO _____. If your answer is "YES" briefly explain.

(Use additional sheets if necessary.)

C. NATURE OF CASE

1. Why are you bringing this case to court? Please explain the circumstances that led to the problem.

C. CAUSE OF ACTION

1. I allege that my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary you may attach additional pages)

a. (1) Count I: _____

- (2) Supporting Facts: (Describe exactly what each defendant did or did not do. State the facts clearly in your own words without citing any legal authority. Use additional sheets if necessary.)

b. (1) Count II: _____

- (2) Supporting Facts:

D. INJURY

1. How have you been injured by the actions of the defendant(s)?

E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you filed other lawsuits in state or federal court that deal with the same facts that are involved in this action. YES ___ NO ___. If your answer is "YES," describe each lawsuit. (If there is more than one lawsuit, describe additional lawsuits on additional separate pages, using the same outline.)

- a. Parties to previous lawsuits:

Plaintiff(s): _____

Defendant(s): _____

- b. Name of court and case or docket number: _____

- c. Disposition (for example: was the case dismissed? Was it appealed? Is it still pending?) _____

d. Issues raised: _____

e. When did you file the lawsuit? _____
Date Month Year

f. When was it (will it be) decided? _____

2. Have you previously sought informal or form relief from the appropriate administrative officials regarding the acts complained of in Part C?
YES ___ NO ___. If your answer is "YES" briefly describe how relief was sought and the results. If your answer is "NO" explain why administrative relief was not sought.

F. REQUEST FOR RELIEF

1. I believe I am entitled to the following relief:

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. Section 1746; 18 U.S.C. Section 1621.

Executed at _____ on _____, 20____.
(Location)

Signature

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